

PLANNED DEVELOPMENT PERMIT

FILE NO.	PD19-017
LOCATION OF PROPERTY	Southwest corner of West Trimble Road and Orchard Parkway (370 West Trimble Road)
ZONING DISTRICT	A (PD) Planned Development Zoning District (File No. PDC17-026)
GENERAL PLAN DESIGNATION	Industrial Park
PROPOSED USE	Planned Development Permit to allow the construction of approximately 99,853 square feet for commercial uses, up to 244-room hotel, an associated parking structure and the removal of 109 ordinance size trees on 8.7 gross acre site.
ENVIRONMENTAL STATUS	Determination of Consistency to the Final Program Environmental Impact Report for the North San José Development Policies Update, and the Final Program Environmental Impact Report for the Envision San José 2040 General Plan, Supplemental Environmental Impact Report, and addenda thereto
OWNER/ADDRESS	LBA RVI-Company I LP PO BOX 847 Carlsbad, CA 92018
APPLICANT/ADDRESS	Scott Landsittel 1 Embarcadero Center, Suite 710 San Francisco, CA 94111

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as facts and findings for this proposed project:

1. **Project Description.** A Planned Development Permit to allow the construction of approximately 99,853 square feet for commercial uses, up to 244-room hotel, an associated parking structure and the removal of 109 ordinance size trees on 8.7 gross acre site.
2. **Site Description and Surrounding Uses.** The subject site is located at the southwest corner of West Trimble Road and Orchard Parkway and is bounded by office development on the north, south, east, and west.

3. **General Plan Conformance.** The subject site is designated as Industrial Park on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. The Industrial Park land use designation is intended for a wide variety of industrial uses such as research and development, manufacturing, testing, and offices.
 - a. **North San José Development Policy.** The City developed several policy documents in order to guide the ongoing growth and development of the North San Jose area as a key employment center for San Jose. The North San Jose Area Development Policy works in conjunction with the General Plan to facilitate employment and development in North San Jose. The Policy currently identifies development of up to 2.7 million square feet of new commercial uses and 1,000 hotel rooms. This capacity is split between 1.7 million square feet of "local serving" retail as defined in the Policy, which is categorized as smaller retail or service establishments that are intended to support the industrial and residential uses within the policy area. The remaining 1 million square feet is for the development of large-scale regional retail establishments of over 100,000 square feet that draws from a regional customer base. The project is consistent with the goals and policies of the General Plan to provide additional commercial/retail and hotel amenities to both support the local industrial, office, commercial and residential uses in the area, facilitate a regional draw, and provide additional opportunity to utilize the nearby transit services.
3. **Zoning Conformance.** The subject site is in the A(PD) Planned Development Zoning District (File No. PDC17-026).
 - a. **Development Standards.** The General Development Standards set forth the allowed uses in the A(PD) Zoning District. The development of the site is limited to 100,000 gross square feet and a hotel with up to 250 rooms.
 - i. Setbacks:
 - 1) West Trimble Road and Orchard Parkway: 10 feet setback
 - 2) Adjacent property: 15 feet setback
 - ii. Building Height – The maximum height of development shall be 150 feet.
 - iii. Parking – One vehicle space for each one per 225 square feet of use

Analysis: The project includes an office, retail, and restaurant development with a hotel and an associated parking garage at maximum gross square footage of approximately 95,853 square feet, which is also consistent with the uses allowed for this site. The tallest building is the hotel building at a maximum height of approximately 92 feet and two inches, which is within the maximum allowed of 150 feet. The amount of parking required is 667 vehicle parking spaces and the project is eligible for up to a 20 percent reduction, which reduces the amount of vehicle parking spaces required to 534. The project provides a range of 534 to 612 vehicular spaces as a result of an optional parking option. The project requires 54 bicycle parking spaces and provides 60 bicycle parking spaces. Therefore, the project is consistent with the development standards.
5. **Environmental Review.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

- a. A Determination of Consistency with the North San José Development Policies Updated Final Environmental Impact Report (Resolution No. 72768), Envision San José 2040 General Plan Final Environmental Impact Report (Resolution No. 76041), Envision San José 2040 General Plan Supplemental Environmental Impact Report (Resolution No. 77617) and Addenda thereto, was made.

6. **Planned Development Permit Findings.** Section 20.100.940 of the San José Municipal Code establishes the required findings for issuance of a Planned Development Permit.

- a. The Planned Development Permit, as approved, furthers the policies of the General Plan land use and policies in that the proposed site improvements will enhance the overall industrial park area. As described above, the proposed project is consistent with the North San José Development Policy and the Rincon South Specific Plan. Additionally, the proposed project is consistent with and will further these policies of the General Plan:
 - i. Land Use and Employment Policy IE-1.5 Promote the intensification of employment activities on sites in close proximity to transit facilities and other existing infrastructure, in particular within the Downtown, North San Jose, the Berryessa International Business Park, and Edenvale.

Analysis: The project site is located close to Highway 101, the San Jose International Airport, and other public transportation routes. The commercial development is within the North San Jose growth area and provides employment activities on site in close proximity to transit facilities.

- b. The Planned Development Permit conforms to the planned development zoning of the property.

Analysis: As described above, the development of a commercial complex is consistent with the general development standards of the Planned Development Zoning District, PDC17-026. The commercial buildings and associated parking structure are within necessary setbacks and height requirement, and provide at least the minimum parking requirements as described above.

- c. The Planned Development Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project is consistent with the Public Noticing and Public Outreach City Council Policies. On-site signs describing the proposed project were posted on the project site. The project has been noticed for public hearing to a radius of 1000 feet, consistent with the Public Outreach City Council Policy.

- d. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious.

Analysis: The development features five separate building situated around the perimeter of the site and the associated parking garage is located towards the rear of the site. The massing of each building is appropriately aligned with West Trimble Road and Orchard Parkway, and each other. The site features a complementary plaza and green space as a centralized area where pedestrians can utilize to access the entire site. Each building has active frontages along the centralized pedestrian access areas. The elevations of the garage building provide necessary shielding and features elements similar and compatible with the office and hotel structure.

- e. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: As described above, a determination of consistency was prepared to reflect an independent judgement and analysis of the project. The temporary construction of the proposed project will not have an unacceptable negative effect on adjacent property or properties because of City limitations on construction hours and the required mitigation measures and permit conditions. The project will also implement standard permit conditions in accordance with City standards and regulations for construction and operation. The proposed project has been evaluated to be in compliance with the City's stormwater requirements and provides on-site bio-treatment.

- 7. **Tree Removal Permit Findings.** Section 13.32.100 of the San José Municipal Code establishes required findings for issuances of a Live Tree Removal Permit.

- a. That the location of the trees with respect to the proposed improvement unreasonably restrict the economic development of the parcel in question. The trees proposed for removal are located within the new parking and landscaping areas.

Analysis: The project involves the removal of 109 ordinance size trees and 45 non ordinance size trees. The trees proposed to be removed are located within close proximity to the structures and necessary circulation areas. A total of 476 trees are required to be replanted. A total of 225 trees at the size of 24-inch box will be replaced on-site and the project includes a condition of approval to contribute the remaining 251 trees requirement to an off-site location, which is consistent with the City's replacement ratios.

In accordance with the findings set forth above, a Planned Development Permit and Tree Removal Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
- 2. **Permit Expiration.** This Permit shall automatically expire two years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit Amendment plans entitled, "North Town", last dated February 12, 2020 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Conformance with Approved Zoning and Environmental Clearance.** All applicable conditions of approval and required environmental mitigation measures from the previously approved Planned Development Zoning, File No. PDC17-026, remain in effect.
7. **CEQA Standard Conditions.**
 - a. Air Quality
 - i. Air Quality. The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:
 - 1) Water active construction areas at least twice daily or as often as needed to control dust emissions.
 - 2) Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
 - 3) Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - 4) Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - 5) Pave new or improved roadways, driveways, and sidewalks as soon as possible.
 - 6) Lay building pads as soon as possible after grading unless seeding or soil binders are used.

- 7) Replant vegetation in disturbed areas as quickly as possible.
 - 8) Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - 9) Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
 - 10) Maintain and properly tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.
 - 11) Post a publicly visible sign with the telephone number and person to contact at regarding dust complaints.
- b. Biological Resources
- i. Santa Clara Valley Habitat Plan. The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permits. The project applicant would be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form to the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee for approval and payment of the nitrogen deposition fee prior to the issuance of a grading permit. The Habitat Plan and supporting materials can be viewed at www.scv-habitatplan.org.
 - ii. Tree Replacement. A total of 476 trees are required to be replanted. The removed trees would be replaced according to tree replacement ratios required by the City, as provided in Table 1 below, as amended.

Table 1: Tree Replacement Ratios				
Circumference of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	none	15-gallon
Less than 19 inches	1:1	1:1	none	15-gallon
<p>x:x = tree replacement to tree loss ratio Note: Trees greater than or equal to 38-inch circumference shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter. A 24-inch box tree = two 15-gallon trees Single Family and Two-dwelling properties may be mitigated at a 1:1 ratio.</p>				

- iii. In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
- iv. The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.
- v. Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of Public Works grading permit(s), in accordance to the City Council approved Fee Resolution. The City will use the off-site tree replacement fee(s) to plant trees at alternative sites.
- vi. Adjacent Tree Protection:
 - 1) To the extent feasible, no site clearing, grading, excavation, or construction shall occur within the drip line of existing off-site trees not slated for removal.
 - 2) If site clearing, grading, excavation, or construction must occur within the drip line of existing trees, these activities shall be done under direct supervision of a Certified Arborist (Certification of International Society of Arboriculture). No cutting of any part of private trees, including roots, shall be done without direct supervision of the Certified Arborist and prior notification of the owners of the trees.
 - 3) Materials, equipment, temporary buildings, fuels, paints, and other construction items shall not be placed within the drip line of existing trees.
 - 4) Any cutting of existing roots shall be done with light, approved equipment under the direct supervision of the Certified Arborist.
 - 5) Grading shall not create drainage problems for trees by channeling water into them, or creating sunken areas.
- c. Cultural Resources
 - i. Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.
 - ii. Human Remains. If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The

project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- iii. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- iv. The MLD identified fails to make a recommendation; or
- v. The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.
- vi. Paleontological Resources. If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning or Director's designee of the Department of Planning, Building and Code Enforcement (PBCE) shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning or Director's designee of the PBCE.

d. Geology And Soils

- i. All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- ii. Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- iii. Ditches shall be installed to divert runoff around excavations and graded areas if necessary.
- iv. The project shall be constructed in accordance with the standard engineering practices in the California Building Code, as adopted by the City of San José. A grading permit from the San José Department of Public Works shall be obtained prior to the issuance of a Public Works clearance. These standard practices would ensure that the future building on the site is designed to properly account for soils-related hazards on the site.

e. Hydrology And Water Quality

- i. Construction-related water quality.

- 1) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- 2) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- 3) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- 4) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- 5) All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- 6) All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- 7) Vegetation in disturbed areas shall be replanted as quickly as possible.
- 8) All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- 9) The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.
- 10) A Stormwater Permit will be administered by the RWQCB. Prior to construction grading for the proposed land uses, the project proponent will file a "Notice of Intent" (NOI) to comply with the General Permit and prepare a SWPPP which addresses measures that would be included in the project to minimize and control construction and post-construction runoff. Measures will include, but are not limited to, the aforementioned RWQCB measures.
- 11) The project proponent will submit a copy of the NOI and draft SWPPP to the City of San José for review and approval prior to start of construction on the project site. The certified SWPPP will be posted at the project site and will be updated to reflect current site conditions.
- 12) When construction is complete, a "Notice of Termination" (NOT) for the General Permit for Construction Activities will be filed with the RWQCB. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction Stormwater Management Plan is in place as described in the SWPPP for the site.

f. Noise

- i. Construction-Related Noise. Noise minimization measures include, but are not limited to, the following:
 - 1) Limit construction hours to between 7:00 a.m. and 7:00 p.m., Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.

- 2) Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
 - 3) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
 - 4) Prohibit unnecessary idling of internal combustion engines.
 - 5) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.
 - 6) Utilize “quiet” air compressors and other stationary noise sources where technology exists.
 - 7) Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
 - 8) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
 - 9) If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.
 - 10) Designate a “disturbance coordinator” who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.
 - 11) Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific “construction noise mitigation plan” and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
 - 12) In the event that pile driving is proposed, nearby residents will be notified of the schedule for its use while it is in use. Portable acoustical barriers will be installed around pile driving equipment.
- ii. Interior Noise Standard For Residential Development. The project applicant shall prepare final design plans that incorporate building design and acoustical treatments to ensure compliance with State Building Codes and City noise standards. A project-specific acoustical analysis shall be prepared to ensure that the design incorporates controls to reduce interior noise levels to 45 dBA DNL or lower within the residential unit. The project applicant shall conform with any special building construction techniques requested by the City’s Building Department, which may include sound-rated windows and doors, sound-rated wall constructions, and acoustical caulking.

- iii. **Exterior Noise.** A detailed acoustical study shall be prepared during final building design to evaluate the potential noise generated by building mechanical equipment and demonstrate the necessary noise control to meet the City's 55 dBA DNL goal. Noise control features such as sound attenuators, baffles, and barriers shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations around the project site. The noise control features identified by the study will be incorporated in the project.

- 8. **Affordable Housing Financing Plans.** The San José City Council ("City") approved the Envision San Jose General Plan 2040 ("General Plan") in 2011. The General Plan provides the framework for development located in San Jose.

The City is in the process of developing financing plans to help fund affordable housing and related amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof. For example, the City Council has directed City staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to, fully participate in, and pay any and all charges, fees, assessments, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.

- 9. **Timing of Tree Removals.** Trees that are proposed for removal to accommodate new development shall not be removed until the related Public Works Grading Permit has been issued.
- 10. **Tree Protection Standards.** The applicant shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. Prior to the removal of any tree on the site, all trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
- 11. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping.

12. FAA Clearance.

- a. Prior to filing an application for a Building Permit, the permittee shall obtain from the Federal Aviation Administration (FAA) a “Determination of No Hazard” for the highest points of the Hotel, Office Building, and Garage. The permittee shall initiate the regulatory FAA review by filing a “Notice of Proposed Construction or Alteration” (FAA Form 7460-1) for the building’s proposed highest point(s). The data on the forms should be prepared by a licensed civil engineer or surveyor using NAD83 latitude/longitude coordinates out to hundredths of seconds and NAVD88 elevations rounded off to next highest foot.
 - b. The permittee shall also comply with any FAA conditions identified in the Determination of No Hazard clearances (once issued). If the FAA requires installation of roof-top obstruction lighting or other physical modification to the building, the permittee shall file for a Permit Adjustment to incorporate those requirements into the Planned Development Permit prior to receiving a Building Permit for construction. If the FAA requires a completed construction notification via filing of a “Notice of Actual Construction” (FAA Form 7460-2), such filing shall be completed prior to City issuance of a Certificate of Occupancy.
- 13. Avigation Easement.** Prior to the issuance of a Building Permit for construction, the property owner shall grant an Avigation Easement to the City of San Jose. Contact either Cary Greene at cgreene@sjc.org (408-392-3623) or Ryan Sheelen at rsheelen@sjc.org (408-392-1193) of the San Jose Airport Department to initiate the easement dedication process.
- 14. Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
- 15. Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
- 16. Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
- 17. Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
- 18. Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
- 19. Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
- 20. Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
- 21. Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.

22. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
23. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
24. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance/approved Planned Development Zoning, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
25. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
26. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
27. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
28. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
29. **Reclaimed Water.** The project shall conform to Chapter 15.10 and 15.11 of the San José Municipal Code. The Code addresses the use of reclaimed water including the requirement that an irrigation system be designed to allow for the current and future use of reclaimed water for all landscaped cumulative areas in excess of ten thousand (10,000) square feet.
30. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, PD19-017 shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
 - d. *Project Addressing Plan.* The project applicant shall submit an addressing plan for approval for the subject development.

31. Public Works Clearance for Building Permit(s) or Map Approval: Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.

- a. Construction Agreement: The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. Transportation: A Traffic Report prepared by Hexagon Transportation Consultants was reviewed and approved by the City on 12/21/17. A separate traffic memorandum was provided to the Planning Department on that date. In conjunction with the Traffic Report:
 - i. An area wide traffic impact analysis was prepared as part of the North San Jose Area Development Policy, adopted June 2005. Traffic impacts were identified and resulted in an area wide traffic impact fees. This project is covered under the North San Jose EIR.
 - ii. Consistent with North San Jose EIR, this project is required to pay a traffic impact fee. The 2019 fee is \$16.45 per s.f. of Industrial or Office/R&D buildings, \$4,838 per Hotel room, \$22.38 per s.f. for Large Scale Commercial buildings and are subject to an annual escalation of 3.3% on July 1st and the next fee escalation will occur on July 1st, 2021. This fee must be paid prior to issuance of Public Works
- c. Grading/Geology:
 - i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10 year storm event.
 - iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity.

- Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
- v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
 - d. Stormwater Runoff Pollution Control Measures: This project must comply with the City's Post Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
 - i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.
 - ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - e. Stormwater Peak Flow Control Measures: The project is located in a non--Hydromodification Management area and is not required to comply with the City's Post- Construction Hydromodification Management Policy (Council Policy 8-14).
 - f. Flood: Zone AH, Elevation 27.00' North American Vertical Datum of 1988 (NAVD 88) and Zone X
 - i. The project site is also located within the Updated 2006 North San Jose Floodplain Management Study (NSJFMS) area. The NSJFMS was updated to reflect the completed Downtown and Lower Guadalupe River Flood Protection Projects and to show the resulting blockage requirements for applicable projects in North San Jose.
 - ii. Elevate the lowest floor of proposed buildings above 27.00' NAVD 88 or above the 2006 NSJFMS Update minimum design elevation, whichever is higher.
 - iii. Non-residential structures may also be floodproofed to the same elevation. For insurance rating purposes, the building's floodproofed design elevation must be at least one foot above the base flood elevation to receive rating credit.
 - iv. An Elevation Certificate (FEMA Form 086-0-33) for each proposed structure, based on construction drawings, is required prior to issuance of a building permit. Consequently, an Elevation Certificate for each built structure, based on finished construction is required prior to issuance of an occupancy permit.
 - v. If the structure is to be floodproofed, a Floodproofing Certificate (FEMA Form 086-0-34) for each structure, floodproofing details, and if applicable, a Flood Emergency Operation Plan and an Inspection & Maintenance Plan are required prior to the issuance of a Public Works Clearance.

- vi. Building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities must be elevated above the base flood elevation or protected from flood damage.
- vii. Construction materials used below the base flood elevation must be resistant to flood damage.
- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- h. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact Amado Valdez at (408) 794-6769 for further information.
- i. **Assessments:** This project proposes a hotel use. The City of San Jose, on September 30, 2008, implemented a special tax for Convention Center Facilities District (CCFD) No. 2008-1 for all existing hotel properties with the intent that future hotel properties would participate as well. The special tax was authorized to be levied on hotel properties for the purpose of paying for the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San Jose Convention Center. The special tax is levied and collected in addition to and in a manner similar to the City's Transient Occupancy Tax. The special tax may not be apportioned in any tax year on any portion of property in residential use in that tax year, with the understanding that transient occupancy of hotel rooms is not residential use. The base special tax is 4% of gross rents and may be subject to an additional special tax up to 1% of gross rents. All new hotel properties within San Jose are encouraged to annex into the CCFD. Please contact Thomas Borden at (408) 535-6831 to coordinate the annexation process.
- j. **Street Improvements:**
 - i. **West Trimble Road frontage:**
 - 1) Construct standard curb, gutter, and 12' attached sidewalk with tree wells at the back of curb.
 - 2) Construct 26' standard driveway cuts for right-in/right-out access.
 - 3) Install a new traffic signal at the main Trimble Road entrance. A minimum of 75 foot northbound and westbound left-turn pockets should be provided at the west Trimble Road access point. Prior to submitting the application for the Public Street Improvement permit, submit an electronic copy of a scaled conceptual traffic signal plan showing right-of-way, intersection geometries, and signal layout.
 - ii. **Orchard Parkway Frontage:**
 - 1) Construct standard curb, gutter, and 12' attached sidewalk with tree wells at the back of curb.
 - 2) Construct 26' standard driveway cuts for each right-in/right-out access.

- 3) The existing traffic signal along the project site will need to be evaluated. Prior to submitting the application for the Public Street Improvement permit, submit an electronic copy of a scaled conceptual traffic signal plan showing right-of-way, intersection geometries, and signal layout.
- iii. West Trimble Road and Orchard Parkway intersection: Remove the southwest pork-chop island and construct new curb, gutter, and sidewalk at the return. A major signal modification is required. Prior to submitting the application for the Public Street Improvement permit, submit an electronic copy of a scaled conceptual traffic signal plan showing right-of-way, intersection geometries, and signal layout.
- iv. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works.
- v. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
- vi. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
- k. Electrical:
 - i. Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
 - ii. Locate and protect existing electrical conduit in driveway and/or sidewalk construction.
 - iii. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas and 5' in residential areas.
 - iv. Provide clearance for electroliers from overhead utilities and request clearance from utility companies. Clearance from electrolier(s) must provide a minimum of 10' from high voltage lines; 3' from secondary voltage lines; and 1' from communication lines.
- l. Street Trees: The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 to confirm the designated street trees. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects." Tilia Tomentosa species street trees shall be planted 40' on-center in cut-outs at the back of curb along West Trimble Road frontage. Preserve existing street trees and infill vacant locations (within sidewalk and median) to achieve 35' on-center spacing along Orchard Parkway (species to be determined). Street trees shall be planted in cutouts at the back of curb along Orchard Parkway from West Trimble Road to northernmost parcel entrance. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.

- m. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.

32. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **4th day of March, 2020.**

Rosalyn Hughey, Director
Planning, Building, and Code Enforcement

Deputy